

DOL fines three blueberry growers for wage/hour violations

By **DON McINTOSH**
Associate Editor

More than two years after television news reporters found children as young as 5 years old working on blueberry farms in several states, U.S. Department of Labor (DOL) agents are cracking down on violations of the Fair Labor Standards Act — the 1938 law that sets the minimum wage, restricts child labor, and requires employers to keep payroll records and pay overtime. In August, DOL Wage and Hour investigators found violations at three Oregon blueberry growers using the growers' own records.

According to the DOL, growers allowed multiple workers to hand pick berries on a single employee's "ticket" and then paid only one worker the piece-rate for each pound picked. Additional workers helped fill the bins, yet their names never appeared on the employer's required payroll records. Under the law, each worker was supposed to have his or her own ticket, and be paid at least the minimum wage. One farm also was found to have violated the child labor provisions, employing a child and failing to maintain a record of the child's date of birth.

DOL filed complaints, and obtained consent judgments signed by Oregon U.S. District Court Judge Michael Hogan. Under the terms of the judgments, B&G Ditchen Farms of Silverton paid \$156,616 in back wages and damages to 810 employees, plus \$13,200 in civil penalties to DOL. Pan-American Berry Growers of Salem paid \$41,790 in back wages and damages for

239 employees, and a civil penalty of \$7,040. E&S Farms of Woodburn paid \$11,301 in back wages and liquidated damages to 52 employees and \$10,500 in penalties to the department.

"Growers in the area are fully aware of their obligation to pay their workers proper wages and the consequences for failing to do so," said Nancy Leppink, deputy administrator of the Wage and Hour Division, in a press statement explaining the enforcement action. "As a result of the Wage and Hour Division's actions, vulnerable workers will receive the wages they are legally owed and have worked under grueling conditions to earn, wages that their families count on and should have received from the outset."

In pursuing the charges, DOL made use of one of the agency's most effective but seldom employed sanctions — the "hot goods" provision. That provision prohibits employers from shipping any goods produced in violation of minimum wage, overtime or child labor standards, and allows the government to seize the goods until the violations are remedied.

Growers didn't like this tactic, and they reached out to the Oregon Bureau of Labor and Industries (BOLI). Labor Commissioner Brad Avakian, whose job is to enforce Oregon's even higher minimum wage law (\$8.80 an hour), wrote a letter Aug. 15 to the Department of Labor.

"It is the conclusion of the Oregon Bureau of Labor and Industries (BOLI) that the seizure of perishable items on Oregon farms under the hot goods pro-

vision likely violates the constitutional rights of farmers who have yet to be found guilty of anything," Avakian wrote. Avakian complained that the U.S. Labor Department was pursuing action without considering joint efforts with his agency, and called on them to immediately cease using the hot goods provision with perishable goods.

Then, Kurt Schrader, Oregon's 5th District congressman, circulated a somewhat more cautious letter to the DOL, which was signed by all members of Oregon's Congressional delegation except for Earl Blumenauer. The letter expresses concern about the narrative Oregon farmers presented, and asks for clarification on how the "hot goods" provision is used.

All this came to public attention Aug. 30 in a front-page top-of-the-fold article in the Oregonian — not about farmworker abuses in the blueberry fields, but about the farm bureau and state officials "blasting" a "heavy-handed" federal labor investigation. In the article, an agriculture industry lawyer characterizes the use of "hot goods" as extortion, with growers forced to admit guilt lest their crops be

impounded and rot.

But Michael Dale, executive director of non-profit Northwest Workers Justice Project, gives a very different account of hot goods. Dale, an attorney,

"...To begin with, the Department of Labor investigators, none of them have authority to issue a hot goods order. It's issued by a federal district court. To get that you have to convince a judge to issue an injunction, the equivalent of a temporary restraining order. And none of the judges that I know in this district are pushovers."

has represented low-wage workers for three decades, and used to direct the statewide migrant legal services program.

"It's a strong mechanism, let's be frank, but it's not as severe and draconian a remedy as people are making it out to be," Dale said. "There's this idea that

they just come in and slap a hot goods order and then the crop can't move and it's going to rot, and they have you over a barrel and you don't have any way to defend yourself. That's all wrong. To begin with, the Department of Labor investigators, none of them have authority to issue a hot goods order. It's issued by a federal district court. To get that you have to convince a judge to issue an injunction, the equivalent of a temporary restraining order. And none of the judges that I know in this district are pushovers."

Dale also said it's not inappropriate to use the hot goods provision with a perishable product, because the way courts handle it, growers can ship and sell goods, but the buyer, in lieu of paying the farmer, pays the court, which later settles where the money goes.

"The idea that the court is just going to sit there and watch the blueberries rot in the warehouse is misguided."

But Dale had one more thing to add: "Thank God somebody is paying any attention to workers not getting paid. There's an epidemic of wage theft of workers in this country right now, and we need strong remedies and advocates for working people who are going after it."

At the Sept. 3 Labor Day picnic at Oaks Park in Portland, Avakian was one of many elected leaders to speak. "In partnership with you in labor, we'll see that Oregon maintains a strong minimum wage, because that's what builds middle class families," he told the labor audience.

The Labor Press caught up with Avakian after the speech to ask about his blueberry letter.

"They're using this law as a shake-down in order to get an agreement from the farmer that they committed a legal violation before they've even finished their investigation, before anybody's been found guilty of anything," Avakian told the Labor Press. "Everyone is entitled to due process."

Avakian said he didn't speak with

any farmworkers or advocates before writing the letter to the Department of Labor, but he heard from the lawyer for the growers, and in any case, he said he knows the law very well.

"The farmers are signing the consent decrees because they know if they fight they'll lose their product," Avakian said. "If you don't admit to the violation, you lose your business. If the law allows for that kind of, in my opinion, improper leverage, then it's an improper use of the law."

Avakian said he has no plans to pursue further enforcement of the farms in question.

"We're all about protecting the worker," Avakian said. "Me opposing the use of this is not only to protect the rights of growers. It's because if you lose a couple hundred thousand dollars of crops, your workers are done for the season, your farm is done. I want to make sure workers continue to have a way to make money in the long term."

Oregon AFL-CIO President Tom Chamberlain had his own reaction to the blueberry battle: "Let me get this straight: They held the blueberries back, [the growers] did what they should have done, and they were able to sell the blueberries. They used enough leverage to get the workers what they needed. So what's the problem?"

Though farmworkers aren't a big presence within organized labor, Chamberlain has made a point of standing up for farmworker rights in the Oregon Legislature.

"When you read it from the workers perspective, it's like the federal government stepped in and got them what they were owed," Chamberlain said. "Thank God we've got a labor secretary who does her job."

Barbecue throw down to benefit Labor's Community Services

Madison's Grill is hosting a Pitmaster Showdown Saturday, Sept. 15, to benefit Labor's Community Service Agency.

Entry fee is \$40 and includes three racks of pork ribs, 10 pound pork loin, and 10 pounds of chicken. Contestants supply their own grill and fuel. Up to 10 contestants will compete.

Contestants will be judged in blind tasting, with the winner receiving a trophy. Bob Tackett, executive secretary-treasurer of the Northwest Oregon Labor Council, will serve as a judge. A People's Choice Award also will be voted on by spectators.

All the food will be sold after the judging. Cost is \$15 — \$12 if you bring two cans of food. Judging starts at 4:30 p.m. with the barbeque buffet to follow. Live music begins at 4 p.m. and will go until 9 p.m.

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